

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15838 of the Church of Jesus Christ, pursuant to 11 DCMR 3108.1, for a special exception under Section 205 to establish a child development center of 80 children and eight staff persons in an R-1-B District at premises 3456 Pennsylvania Avenue, S.E. (Square 5528, Lot 814).

HEARING DATES: July 21, September 22, October 13 and
December 1, 1993

DECISION DATES: December 22, 1993 and July 6, 1994

DISPOSITION: The Board GRANTED the application with CONDITIONS by a vote of 4-0 (Craig Ellis, Maybelle Taylor Bennett, George Evans and Angel F. Clarens to grant; Laura M. Richards not voting, having recused herself). The Board APPROVED, in part, a modification of its order by a vote of 4-0 (Angel F. Clarens, Craig Ellis, George Evans and Maybelle Taylor Bennett to approve, in part; Laura M. Richards not voting, having recused herself).

FINAL DATE OF ORDERS: June 3, and July 14, 1994

RECONSIDERATION ORDER

The Board granted the application subject to twelve conditions by its order dated June 3, 1994. Condition Nos. 8, 9 and 10 of the order read as follows:

8. Prior to the issuance of the certificate of occupancy for the use, the applicant shall present to the Zoning Administrator an executed easement demonstrating that the applicant has right-of-way over the triangular portion of the driveway located on Lot 16 in Square 5528.
9. Prior to the issuance of the certificate of occupancy, the applicant shall submit to the Board for its review and approval, a landscaping plan demonstrating its efforts to screen the guardrail along the east side of the Pennsylvania Avenue access, to protect existing trees, and to prevent soil erosion. Prior to the submission of such landscape plan to the Board, the applicant shall seek appropriate review of such plan from the Department of Public Works with respect to the proposed plantings in the public space between the applicant's property and Pennsylvania Avenue.

10. Prior to the issuance of the certificate of occupancy, the applicant shall submit a plan detailing the play area to be used and the type of fencing proposed for the property line along 38th Street for the Board's review and approval. In addition, the applicant shall present the plans for the play area to the D.C. Department of Consumer and Regulatory Affairs to ensure that the proposed space meets the minimum required area per child for the proposed use.

By its order, dated July 14, 1994, the Board modified its original approval by deleting Condition No. 8 of the Board's order dated June 3, 1994 and by accepting, as adequate, plans submitted by the applicant in response to Condition No. 9. With respect to Condition No. 10, the Board concluded that the applicant's submission did not adequately address the Board's concerns.

By letter dated July 14, 1994, the applicant's representative requested expedited reconsideration by the Board of its decision not to approve the applicant's submission with respect to Condition No. 10 of the Board's order dated June 3, 1994. In support of its motion for reconsideration, the applicant's representative argued as follows:

1. The construction of a new, additional fence along the 38th Street property line would create a fenced-in void between the property line and the existing chain link fence. The applicant has received the necessary approvals from the Department of Public Works and the Department of Consumer and Regulatory Affairs for retention of the current fence and the use of the public space to meet the criteria for play area for the proposed child development center. The construction of a fence along the property line would be unnecessarily expensive and would deprive the applicant the use of the larger play area approved by DPW and DCRA for that use.
2. The rectangular void created by building a second fence would be awkward in appearance and would be difficult to maintain.
3. As indicated in the June 16, 1994 submission, the applicant has complied with all relevant laws and regulations with respect to the use of the currently fenced-in space as play area for the child development center.

By correspondence dated July 21, and July 25, 1994, counsel for the Penn-Branch Citizens Civic/Civil Association, a party in opposition to the application, opposed the applicant's request and motion. The Board notes counsel's opposition to the applicant's

request for expedited consideration of its motion. However, the Chairperson of the Board ruled that the matter be scheduled for consideration at the Board's special public meeting of July 29, 1994 prior to submission of the opposition's submission. Therefore, the Board concludes that the issue is moot and declines consideration of the arguments with respect thereto.

With respect to the applicant's motion for reconsideration of the Board's decision not to approve the applicant's submission in response to Condition No. 10 of the Board's order of June 3, 1994, counsel for the opposition argued that Condition No. 10 was adopted by the Board out of consideration for the neighborhood's concern about the noise problems attendant to use of outdoor play space on a daily basis. The opposition was of the opinion that the condition, as stated, represented a compromise and should not be disturbed in order to ensure some modest protection for the neighborhood.

In addition, counsel for the opposition requested the Board to reconsider its decision of July 14, 1994 to delete Condition No. 8 of its original decision dated June 3, 1994. Counsel for the opposition argued that the applicant's submission on which the Board based its decision to delete Condition No. 8 was not properly served on all parties to the application, particularly Mr. Floyd White, the owner of the property which is the subject of the condition in question.

In response to the opposition's submission, the applicant's representative submitted a certificate of service, dated July 25, 1994 which attests that the applicant's motion dated June 16, 1994 was mailed, postage pre-paid to Alberta Paul, President of the Penn-Branch Civic/Civil Association and to ANC 7B, and that copies of the motion were delivered by hand to Mr. Floyd White and Mr. Howard Green, Sr. The Board notes that the applicant failed to serve counsel for the opposition with a copy of the motion. However, all three witnesses for the opposition were individually served. The Board concludes, therefore, that adequate service was provided to all parties to the case.

Based upon consideration of the foregoing motions, responses thereto, the record in the case, and its final orders, the Board concludes, with respect to the motion of the opposition for reconsideration of the Board's decision to delete Condition No. 8 of its order dated June 3, 1994, that the opposition should more properly have filed its opposition to the applicant's motion in a timely manner within ten days of the service of the motion on June 16, 1994. Notwithstanding the timeliness of the opposition's response, the Board concludes that the opposition offered no argument to support the retention of Condition No. 8 nor any

evidence specifically addressing whether the Board erred in deleting said condition. Accordingly, the motion for reconsideration of the Board's decision to delete Condition No. 8 of its order dated June 3, 1994 is hereby **DENIED**.

With respect to the applicant's motion for reconsideration of its decision not to approve the applicant's submission with respect to Condition No. 10 of the Board's order dated June 3, 1994, the Board concludes that it was in error in finding that the proposed site plan was inadequate. The Board concludes that the proposed play area and fence have met the criteria set forth by the D.C. Department of Public Works and Department of Consumer Regulatory Affairs. The Board further concludes that the issue of noise from the play area has been adequately addressed in that outdoor play time will be staggered so that all the children shall not be in the play area at one time; the fencing and landscaping along the north of the property will provide adequate screening of the residences along S Street from the play area; and, the separation of the play area from residences to the east by 38th Street and the existing park would provide an adequate noise screening buffer. Accordingly, it is hereby **ORDERED** that the motion to reconsider the Board's decision with respect to Condition No. 10 of its order dated June 3, 1994 as set forth in its modification order dated July 14, 1994 is hereby **GRANTED**. Condition No. 10 of the Board's June 3, 1994 order, renumbered as Condition No. 9 of the Board's July 14, 1994 order, is hereby amended to read as follows:

9. The location fencing and landscaping of the play area shall be as shown on the site plan marked as Exhibit No. 64A of the record, subject to approval by the D.C. Department of Public Works and the Department of Consumer and Regulatory Affairs.

In all other respects, the orders of the Board dated June 3 and July 14, 1994 shall remain in full force and effect.

DECISION DATE: July 29, 1994

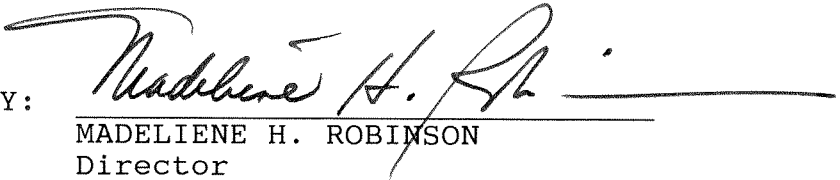
VOTE: 4-1 (The Board **DENIED** the opposition's motion for reconsideration by a vote of 4-0 (Angel F. Clarens, Maybelle Taylor Bennett, George Evans and Craig Ellis to deny; Laura M. Richards not voting, having recused herself)).

VOTE: 3-1 (The Board **GRANTED** the motion of the applicant by a vote of 3-1 (Craig Ellis, Maybelle Taylor Bennett and George Evans to approve; Angel F. Clarens opposed to the motion; Laura M. Richards not voting, having recused herself)).

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BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Director

FINAL DATE OF ORDER: AUG 10 1994

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENMTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

motion15858/SS/LJP

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15838

As Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 10 1994 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

John Leslie, Jr., Pastor
6311 13th Street, N.W.
Washington, D.C. 20011


Houston Brown
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Floyd White
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Washington, D.C. 20020

Con Hitchcock
2000 P Street, N.W., #700
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Howard Green, Sr.
3737 S Street, S.E.
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Herbert Boyd, Jr., Chairperson
Advisory Neighborhood Commission 7-B
3200 S Street, S.E.
Washington, D.C. 20020


MADELIENE H. ROBINSON
Director

DATE: AUG 10 1994